

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 246

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-2-12-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4.5. As used in this chapter, "sexually violent predator" ~~means an individual who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in any of the offenses described in section 4 of this chapter~~ **has the meaning set forth in IC 35-38-1-7.5.**

SECTION 2. IC 11-13-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A condition to remaining on parole is that the parolee not commit a crime during the period of parole.

(b) The parole board may also adopt, under IC 4-22-2, additional conditions to remaining on parole and require a parolee to satisfy one (1) or more of these conditions. These conditions must be reasonably related to the parolee's successful reintegration into the community and not unduly restrictive of a fundamental right.

(c) If a person is released on parole the parolee shall be given a written statement of the conditions of parole. Signed copies of this statement shall be:

- (1) retained by the parolee;
- (2) forwarded to any person charged with the parolee's supervision; and

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(3) placed in the parolee's master file.

(d) The parole board may modify parole conditions if the parolee receives notice of that action and had ten (10) days after receipt of the notice to express the parolee's views on the proposed modification. This subsection does not apply to modification of parole conditions after a revocation proceeding under section 10 of this chapter.

(e) As a condition of parole, the parole board may require the parolee to reside in a particular parole area. In determining a parolee's residence requirement, the parole board shall:

(1) consider:

(A) the residence of the parolee prior to the parolee's incarceration; and

(B) the parolee's place of employment; and

(2) assign the parolee to reside in the county where the parolee resided prior to the parolee's incarceration unless assignment on this basis would be detrimental to the parolee's successful reintegration into the community.

(f) As a condition of parole, the parole board may require the parolee to:

(1) periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of tests to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9); and

(2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

(g) As a condition of parole, the parole board:

(1) may require a parolee who is a sex and violent offender (as defined in IC 5-2-12-4) to:

(A) participate in a treatment program for sex offenders approved by the parole board; and

(B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:

(i) receives the parole board's approval; or

(ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

(A) require a parolee who is an offender (as defined in IC 5-2-12-4) to register with a sheriff (or the police chief of a consolidated city) under IC 5-2-12-5;

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(B) prohibit the offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of parole; ~~unless the offender obtains written approval from the parole board; and~~

(C) prohibit a parolee who is an offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the offender's sex offense. ~~unless the offender obtains a waiver under IC 35-38-2-2.5.~~

~~If the parole board allows the offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B); the parole board shall notify each school within one thousand (1,000) feet of the offender's residence of the order.~~

(h) The address of the victim of a parolee who is an offender convicted of a sex offense (as defined in IC 35-38-2-2.5) is confidential. ~~even if the offender obtains a waiver under IC 35-38-2-2.5.~~

SECTION 3. IC 35-42-4-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10. (a) As used in this section, "sexually violent predator" has the meaning set forth in IC 35-38-1-7.5.**

(b) A sexually violent predator who knowingly or intentionally works for compensation or as a volunteer:

- (1) on school property;**
- (2) at a youth program center; or**
- (3) at a public park;**

commits unlawful employment near children by a sexual predator, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction based on the person's failure to comply with any requirement imposed on an offender under this chapter.

SECTION 4. IC 5-2-12-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 13. (a) Except as provided in subsections (b) and (c), an offender's duty to register under this chapter expires ten (10) years after the date the offender:**

- (1) is released from a penal facility (as defined in IC 35-41-1-21) or a secure juvenile detention facility of a state or another jurisdiction;**
- (2) is placed in a community transition program;**
- (3) is placed in a community corrections program;**
- (4) is placed on parole; or**
- (5) is placed on probation;**

whichever occurs last.

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(b) An offender who is ~~found to be~~ a sexually violent predator ~~by a court under IC 35-38-1-7.5(b)~~ is required to register for life.

(c) An offender who is convicted of at least one (1) sex and violent offense that the offender committed:

- (1) when the person was at least eighteen (18) years of age; and
- (2) against a victim who was less than twelve (12) years of age at the time of the crime;

is required to register for life.

(d) An offender who is convicted of at least one (1) sex and violent offense in which the offender:

- (1) proximately caused serious bodily injury or death to the victim;
- (2) used force or the threat of force against the victim or a member of the victim's family; or
- (3) rendered the victim unconscious or otherwise incapable of giving voluntary consent;

is required to register for life.

(e) An offender who is convicted of at least two (2) unrelated sex and violent offenses is required to register for life.

SECTION 5. IC 35-38-1-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7.5. (a) As used in this section, "sexually violent predator" ~~has the meaning set forth in~~ **means a person who suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in any of the offenses described in IC 5-2-12-4.**

(b) A person who:

(1) commits an offense described in IC 5-2-12-4:

(A) by using or threatening the use of deadly force;

(B) while armed with a deadly weapon; or

(C) that results in serious bodily injury to a person other than a defendant;

(2) is at least eighteen (18) years of age and commits an offense described in IC 5-2-12-4 against a child less than twelve (12) years of age; or

(3) commits an offense described in IC 5-2-12-4 while having a previous unrelated conviction for an offense described in IC 5-2-12-4 for which the person is required to register as an offender under IC 5-2-12;

is a sexually violent predator. ~~IC 5-2-12-4.5.~~

~~(b)~~ (c) This section applies whenever a court sentences a person for a sex offense listed in ~~IC 5-2-12-4(a)(1) through IC 5-2-12-4(a)(10)~~ IC 5-2-12-4 for which the person is required to register with the sheriff

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(or the police chief of a consolidated city) under ~~IC 5-2-12-5~~
IC 5-2-12.

~~(c)~~ **(d)** At the sentencing hearing, the court shall determine whether the person is a sexually violent predator ~~Before making a determination under this section, the court shall~~ **under subsection (b).**

(e) If the court does not find the person to be a sexually violent predator under subsection (b), the court shall consult with a board of experts consisting of two (2) board certified psychologists or psychiatrists who have expertise in criminal behavioral disorders **to determine if the person is a sexually violent predator under subsection (a).**

~~(d)~~ **(f)** If the court finds that a person is a sexually violent predator:

- (1) the person is required to register with the sheriff (or the police chief of a consolidated city) as provided in IC 5-2-12-13(b); and
- (2) the court shall send notice of its finding under this subsection to the criminal justice institute.

~~(e)~~ **(g)** A person who is found by a court to be a sexually violent predator under subsection ~~(e)~~ **(e)** may petition the court to consider whether the person is no longer a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after the sentencing court makes its finding under subsection ~~(e)~~ **(e)**. A person may file a petition under this subsection not more than one (1) time per year. If a court finds that the person is no longer a sexually violent predator, the court shall send notice to the Indiana criminal justice institute that the person is no longer considered a sexually violent predator.

SECTION 6. IC 35-38-2-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2.5. (a) As used in this section, "offender" means an individual convicted of a sex offense.

(b) As used in this section, "sex offense" means any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual battery (IC 35-42-4-8).
- (9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- (10) Incest (IC 35-46-1-3).

(c) A condition of remaining on probation or parole after conviction

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for a sex offense is that the offender not reside within one (1) mile of the residence of the victim of the offender's sex offense.

(d) An offender:

(1) who will be placed on probation shall provide the sentencing court and the probation department with the address where the offender intends to reside during the period of probation:

(A) at the time of sentencing if the offender will be placed on probation without first being incarcerated; or

(B) before the offender's release from incarceration if the offender will be placed on probation after completing a term of incarceration; or

(2) who will be placed on parole shall provide the parole board with the address where the offender intends to reside during the period of parole.

(e) An offender, while on probation or parole, may not establish a new residence within one (1) mile of the residence of the victim of the offender's sex offense. ~~unless the offender first obtains a waiver from the:~~

(1) court, if the offender is placed on probation; or

(2) parole board, if the offender is placed on parole;

for the change of address under subsection (f):

(f) The court or parole board may waive the requirement set forth in subsection (e) only if the court or parole board, at a hearing at which the offender is present and of which the prosecuting attorney has been notified, determines that:

(1) the offender has successfully completed a sex offender treatment program during the period of probation or parole;

(2) the offender is in compliance with all terms of the offender's probation or parole; and

(3) good cause exists to allow the offender to reside within one (1) mile of the residence of the victim of the offender's sex offense.

(g) If the court or parole board grants a waiver under subsection (f), the court or parole board shall state in writing the reasons for granting the waiver. The court's written statement of its reasons shall be incorporated into the record.

(h) (f) The address of the victim of the offender's sex offense is confidential. ~~even if the court or parole board grants a waiver under subsection (f):~~

SECTION 7. IC 35-41-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

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- (1) within five (5) years after the commission of the offense, in the case of a Class B, Class C, or Class D felony; or
- (2) within two (2) years after the commission of the offense, in the case of a misdemeanor.

(b) A prosecution for a Class B or Class C felony that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

- (1) first discovers ~~the identity of evidence sufficient to charge~~ the offender with ~~the offense through~~ DNA (deoxyribonucleic acid) ~~evidence~~; ~~analysis~~; or
- (2) could have discovered ~~the identity of evidence sufficient to charge~~ the offender with ~~the offense through~~ DNA (deoxyribonucleic acid) ~~evidence~~ **analysis** by the exercise of due diligence.

However, for a Class B or Class C felony in which the state first discovered the identity of an offender with DNA (deoxyribonucleic acid) evidence after the time otherwise allowed for prosecution and before July 1, 2001, the one (1) year period provided in this subsection is extended to July 1, 2002.

(c) A prosecution for a Class A felony may be commenced at any time.

(d) A prosecution for murder may be commenced:

- (1) at any time; and
- (2) regardless of the amount of time that passes between:
 - (A) the date a person allegedly commits the elements of murder; and
 - (B) the date the alleged victim of the murder dies.

(e) A prosecution for the following offenses is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one (31) years of age:

- (1) IC 35-42-4-3(a) (Child molesting).
- (2) IC 35-42-4-5 (Vicarious sexual gratification).
- (3) IC 35-42-4-6 (Child solicitation).
- (4) IC 35-42-4-7 (Child seduction).
- (5) IC 35-46-1-3 (Incest).

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(g) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the

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period of limitation has expired at the time of dismissal, or will expire within ninety (90) days after the dismissal.

(h) The period within which a prosecution must be commenced does not include any period in which:

- (1) the accused person is not usually and publicly resident in Indiana or so conceals himself **or herself** that process cannot be served; ~~on him;~~
- (2) the accused person conceals evidence of the offense, and evidence sufficient to charge ~~him~~ **the person** with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or
- (3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds or bribery while in public office.

(i) For purposes of tolling the period of limitation only, a prosecution is considered commenced on the earliest of these dates:

- (1) The date of filing of an indictment, information, or complaint before a court having jurisdiction.
- (2) The date of issuance of a valid arrest warrant.
- (3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

(j) A prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty, notwithstanding that the period of limitation has expired.

SECTION 8. IC 35-42-4-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 11. (a) As used in this section, "offender against children" means a person required to register as an offender under IC 5-2-12 who has been:**

- (1) found by a court to be a sexually violent predator under:**
 - (A) IC 35-38-1-7.5; or**
 - (B) the law of another jurisdiction that identifies the person as being likely to repeatedly commit a sex offense; or**
- (2) convicted of one (1) or more of the following offenses:**
 - (A) Child molesting (IC 35-42-4-3).**
 - (B) Child exploitation (IC 35-42-4-4(b)).**
 - (C) Child solicitation (IC 35-42-4-6).**
 - (D) Child seduction (IC 35-42-4-7).**
 - (E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.**

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- (F) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (E).
- (b) As used in this section, "reside" means to spend more than two (2) nights in a residence in any thirty (30) day period.
- (c) An offender against children who knowingly or intentionally:
- (1) resides within one thousand (1,000) feet of:
 - (A) school property;
 - (B) a youth program center; or
 - (C) a public park; or
 - (2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense;
- commits a sex offender residency offense, a Class D felony.

SECTION 9. IC 35-50-2-14, AS AMENDED BY P.L.71-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. (a) The state may seek to have a person sentenced as a repeat sexual offender for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, **or for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3**, by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, **or for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3**.

(b) After a person has been convicted and sentenced for a felony committed after sentencing for a prior unrelated felony conviction under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, **or for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3**, the person has accumulated one (1) prior unrelated felony conviction. However, a conviction does not count for purposes of this subsection, if:

- (1) it has been set aside; or
 - (2) it is one for which the person has been pardoned.
- (c) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.
- (d) A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had

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accumulated one (1) prior unrelated felony conviction under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, **or had accumulated one (1) prior unrelated conviction for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.**

(e) The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

SECTION 10. [EFFECTIVE JULY 1, 2006] **IC 35-42-4-10 and IC 35-42-4-11, both as added by this act, apply only to crimes committed after June 30, 2006.**

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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